No. 3830

IN THE

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT

IN THE MATTER OF
GEORGE R. JESSEE, Bankrupt,
J. F. HERRICK, as Trustee of the Estate of GEORGE R. JESSEE, Bankrupt,
Petitioner and Appellant,

vs.

FIRST NATIONAL BANK OF COLVILLE, WASHINGTON, a corporation.
Respondent and Appellee.

BRIEF
FOR PETITIONER AND APPELLANT

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INDEX.

Argument	4
Assignments of Error	2
Statement of Case	1
Stipulated Facts	1

TABLE OF STATUTES.

Bankruptcy Act Sec. 24-b ---------- 1
Bankruptcy Act Sec. 47-a (2) ---------- 6
Remington's 1915 Codes and Statutes of Washington,
Sec. 3660 ---------- 4-5
Remington's 1915 Codes and Statutes of Washington,
Sec. 3665 ---------- 10
Remington's 1915 Codes and Statutes of Washington,
Sec. 8298 ---------- 4
Remington's 1915 Codes and Statutes of Washington,
Sec. 8299 ---------- 5-8

TABLE OF CASES.

American Savings Bank & Tr. Co. vs. Helgesen,
67 Wash. 572 ---------- 6
Clark vs. Killian, 116 Wash. 532; 199 Pac. 721 ---------- 5
Clark vs. Wilson, 19 N. E. 860 ---------- 9
Dawsey vs. Kirvan, 83 So. 338 ---------- 8
Gates vs. Brown, 1 Wash. 474 ---------- 6
Holmes vs. Crooks, 76 N. W. 1073 ---------- 9
Jennings vs. Schwartz, 82 Wash. 209 ---------- 6
Kennery vs. N. W. Junk Co., 108 Wash. 859 ---------- 7
Kidder vs. Fay, 60 Wis. 218; 18 N. W. 839 ---------- 9
Ruling Case Law, 20-333 ---------- 8
Shortle vs. Stockton, 7 Watts (Pa.) 526 ---------- 8
Stetson & Post Mill Co. vs. McDonald, 5 Wash. 496---- 6-9
Van Winkle vs. Mitchell, 66 Wash. 296 ---------- 10
Woods vs. Young Lumber Company, 107 Wash. 432---- 7

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BRIEF
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STATEMENT OF CASE.

This matter is brought to this Court both on a Petition to Revise in matter of law under Sec. 24 b. of the Bankruptcy Act, and also on Appeal. It is not clear from the decisions which is the proper method. A pure question of law is presented, however, and that the case might not be thrown out on a technicality, it has been brought up by both methods.

The facts are stipulated and are as follows: (Tr. 13)

On November 17th,, 1921, the bankrupt gave to

the First National Bank of Colville a chattel mortgage for Thirty-six Hundred and seventeen Dollars ($3617.00), covering two automobiles. At that time, the First National Bank of Colville advanced the full purchase price of the automobiles in question and the mortgage was given for the purpose of securing the purchase price thereof.

On the 18th day of November, 1920, the mortgage was filled in the office of the Auditor of Stevens County, Washington, in which County the automobiles were kept.

The notary did not sign the affidavit of good faith. He did, however, attach his seal opposite the place where his signature should have been. The affidavit of good faith is followed on the instrument by the acknowledgment and the acknowledgment is in proper form, signed by the notary, and his seal placed thereon. Undisputed oral testimony was admitted over objection, that the mortgagor (the bankrupt herein) swore to the affidavit of good faith.

The mortgage was a single sheet of paper with the blank form for the affidavit and acknowledgment on the back thereof.

The petition in bankruptcy was filed December 28th, 1920 and adjudication made January 14th, 1921, and J. F. Herrick qualified as Trustee January 29th, 1921, and is now the Trustee of said estate.

The sole question involved is, whether or not the mortgage is valid as against the Trustee in Bankruptcy.

ASSIGNMENTS OF ERROR.

The Petitioner and Appellant contends that the lower Court erred as follows: (Tr. 30).

I.

In reversing the order of the referee made and entered adjudging the mortgage of The First National Bank of Colville void as against the Trustee.

II.

In refusing to affirm the order of the Referee made and entered adjudging the mortgage of The First National Bank of Colville to be void as against the Trustee.

III.

In adjudging the chattel mortgage to The First National Bank of Colville to be valid as against the Trustee.

IV.

In failing to adjudge the chattel mortgage of The First National Bank of Colville void as against the Trustee.

V.

In reversing the order of the Referee ordering the return of the property covered by said chattel mortgage, or the proceeds thereof, to the Trustee.

VI.

In failing to affirm the order of the Referee, ordering the return of the property covered by said chattel mortgage to the Trustee.

VII.

In denying that the Trustee is entitled to the property covered by said chattel mortgage, free and clear from the lien thereof.

ARGUMENT.

The Trustee relies upon the following propositions:

I. That the chattel mortgage in question is void as against the Trustee under the Statutes of the State of Washington unless it is accompanied by an affidavit of good faith, and the Notary's signature to the acknowledgment and the placing of the two seals on the instrument are not sufficient.

II. That the mortgage being over three hundred dollars must be recorded as well as filed under the Statutes of the State of Washington.

I.

Sec. 3660 *Remington's* 1915 *Codes and Statutes of Washington* reads as follows:

> "Affidavit of Good Faith—Acknowledgment—Recording. A mortgage of personal property is void as against all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon such property, and against all subsequent purchasers, pledgees, and mortgagees and encumbrances for value in good faith *unless it is accompanied by an affidavit of the mortgagor that it is made in good faith,* and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged and filed within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated as provided by law."

Sec. 8298 reads as follows:

> "Every duly qualified Notary Public is authorized in any County in this state—

2. To take acknowledgments of all deeds and other instruments of writing, and certify to same in the manner required by law.

3. To take depositions and affidavits and administer all oaths required by law to be administered; and every Attorney at Law who is a Notary Public may administer any oath to his client and no pleadings or affidavits shall, on that account, be held by any Court to be improperly verified."

Sec. 8299 reads:

"Signature—Seal Need not be Affixed, When. It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts in this state, to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially, he shall, in addition to his name and the words 'Notary Public,' add his place of residence and affix his official seal."

It will be noticed that Sec. 3660 is an iron-clad statute. It is void "Unless accompanied by the affidavit of the mortgagor * * * * * * and acknowledged * * * and filed within ten days * * * "

The Supreme Court of Washington has construed this statute in *Clark vs. Killian*, 116 *Wash.*, 532, 199 *Pac.*, 721 (*Aug.* 1921).
and there say—

"Under this Statute, a chattel mortgage not recorded within the time, is void as to all the persons mentioned and as to them is of no effect."

As the *filing* and *affidavit*, are in the same category, the decision applies also to the case at Bar. It follows

then that unless the affidavit in this case is perfect on its face, the mortgage is void, for the Trustee is a *creditor.* (*Bankruptcy Act Sec.* 47 *a*-(2), 70*c*) and parol evidence cannot be introduced. *Gates v. Brown* 1 *Wash.*, 474. *Stetson & Post Mill Company v. McDonald,* 5 *Wash.* 496. In the latter case, the Court said—

> "These notices are required to be recorded or filed for record and the notice being invalid when filed, subsequent proof could not be made as to any material fact omitted to render the notice valid and make it relate back to the time it was filed for record."

An intention to sign cannot be construed as a signing.

In American Sav. Bank & Tr. Co. vs. Helgesen, 67 Wash. 572, the Court sitting en banc says:

> "Here, failure to sign the mortgage was due entirely to an inadvertence and oversight. An intention to sign an instrument cannot be held equivalent to an actual signing of the instrument."

In Jennings vs. Schwartz, 82 Wash. 209, the Court, on page 218, says, in construing the recording statute relative to conditional sales:

> "The statute in question has a wider effect. It has the elements of a recording act. It will be remembered that prior to its enactment, unrecorded conditional bills of sale of personal property were valid in this state, not only as between the vendor and vendee, but as to encumbrances and purchasers without notice, and subsequent bona fide creditors of the vendee. It was thus possible for the vendee of such property to commit frauds by disposing of the property to innocent third persons and by using it as a basis upon which to obtain credit. While

the statute therefore tends in the same degree to prevent frauds between vendors and vendees through the instrumentality of perjury as does the statutes of frauds, its principal if not primary purpose is to prevent the vendor and vendee of such property from committing frauds upon third persons. It would seem then, since it affects persons other than the parties to the agreement, the courts are justified in giving it a more strict construction than it gives to the statute of frauds; that it is proper to require that the instrument when filed shall show on its fact a compliance with the statute; that the instrument shall be complete in itself; thus doing away with the necessity of inquiring into extrinsic matters to determine its validity.

Tested by the more strict rule, we are clear that this memorandum was not signed by the vendor within the meaning of the statute. The instrument would appear no different on its fact had it been prepared wholly by the vendee without the knowledge or consent of the vendor. Whether it was signed by the vendor or not was thus subject to dispute, even as between the parties, and the question could only be determined by an examination into their acts and conduct. The rights of third persons should not be left to depend upon such circumstances; as to them, the instrument should be fair upon its face. As this instrument is not thus fair, we hold the sale absolute as to subsequent creditors in good faith."

See also *Kennery vs. N. W. Junk Co.*, 108 *Wash.* 859.

Counsel contends that *Woods vs. Young Lumber Company*, 107 *Wash*, 432 is controlling here. In that case, the Court held that two signatures and one seal are enough, and counsel reasons why not two seals and

one signature; we ask if this is so, why not one seal and one signature, or one signature or one seal, or nothing at all? Where will you stop? See *Shortle v. Stockton, 7 Watts (Pa.)* 526.

As the referee says, anyone can put on a seal but few can forge a signature so well as to defy detection. See *Dawsey vs. Kirvan (Ala)* 83 *So.* 338.

It seems to us that we have a different situation here than in the Woods case. It is true the Court there used certain language (Dicta) saying—

> "Two acts * * * might well be done by the Notary in one certificate,"

but in the present case, it is apparent that it was *not* the intention of the Notary to evidence the two acts by one certificate, and two acts are *not* the same. The power to take acknowledgments is given by subdivision 2, Sec. 8298 above quoted, while the power to administer oaths is given by Sec. 3. The Notary had no power at common law to administer oaths (20 *R. C. L.* 333).

Counsel will contend that it is not necessary for the Notary to sign the affidavit to make it efficacious. This is answered by a reference to Sec. 8299 supra which says—"When he shall sign".

Furthermore, in matters involving instruments of this kind which must be complete to be filed, it would be absurd to require third persons to go behind the record,

and hunt up the Notary to see if the affidavits were in fact sworn to.

Stetson etc. vs. McDonald, supra.
Kidder vs. Fay, 60 *Wis.* 218, 18 *N. W.* 839.

Counsel also contends that the seal may be regarded as a signature. This is not the law, see

Clark vs. Wilson, 19 *N. E.* 860, 127 *Ill.* 449.
Holmes vs. Crooks, 76 *N. W.* 1073, 56 *Nebr.* 466.

Furthermore, the signature of a Notary is an official act. He may not delegate the power, therefore the cases relating to the forms of ordinary signatures are not applicable here.

The mortgagee here is a bank, the very basis of a bank's business is the individuality of the signature. Counsel loses sight of the fact that the *signature* authenticates the affidavit and the *seal* authenticates the signature. There being no signature, the seal means nothing.

Counsel will also argue that this is purely a "formal objection", that no one has been hurt. Under modern business methods and recording statutes a creditor (and much less a Trustee in bankruptcy) is not required to go behind the statute. There is nothing in the record to show that creditors were not hurt. The objection would be just as "formal" if the instrument contained neither affidavit nor acknowledgment. The Legislature saw fit to pass the statute and the Courts may not nullify it. The trial Court in his opinion says—(Tr. 26)

"I admit the question is not free from doubt".

It is certainly a dangerous precedent to allow signatures to written instruments, where the rights of third parties have intervened, to be put in by absent treatment and mental resolve.

II.

Sec. 3665 Remington's 1915 Codes and Statutes of Washington is as follows:

> "Regarding mortgages in excess of three hundred dollars. A mortgage given to secure the sum of three hundred dollars or more exclusive of interest, costs and attorney's or counsel fees, may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or a copy thereof must also be filed and indexed as required by this Act."

It is our contention that a chattel mortgage of over three hundred dollars must be recorded to import notice. The only case construing the statute is *Van Winkle vs. Mitchell,* 66 *Wash.* 296. In that case, the Court said, referring to the statute 3665—

> "This has reference to another class of mortgages with a method for giving notice distinct from the other."

It is true the statute says "may" but the Court is familiar with the rule of statutory construction whereby *may* will be read *must* and vice versa in order to give sense to the statute. If this is not a mandatory statute, it means nothing.

We respectfully contend that the order of the District Judge should be reversed and the mortgage declared void as to the Trustee in Bankruptcy.

Respectfully submitted,

FABIAN B. DODDS,

Attorney for Petitioner and Appellant.

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INDEX

Argument 2
Statement of Case 1

TABLE OF STATUTES

Remington's 1915 Codes and Statutes of Washington..... 5

TABLE OF CASES

Andrews vs. Marshall, 26 Tex. 212 C. J. 1, 836; 1, 838..... 9
Jordan vs. Long, 19 So. 843..... 9
Van Winkle vs. Mitchum, 66 Wash. 296..... 12
Woods vs. Young Lumber Co., 107 Wash. 432..... 3
Wright vs. Wilson, 17 Mich. 192..... 8

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FIRST NATIONAL BANK OF
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Respondent and Appellee.

BRIEF
FOR RESPONDENT AND APPELLEE

STATEMENT OF THE CASE

We desire to add but little to the statement contained in the brief for petitioner and appellant. The mortgage in question and the evidence in the cause show that the signature of the mortgagor, the bankrupt, to the mortgage and the affidavit of good faith were affixed at the same time, and that the instrument is

entirely complete save for the lack of the signature of the notary on that part of the instrument where the blank form of affidavit of good faith is found.

ARGUMENT

The bank contends as follows:—

1. The chattel mortgage in question, as finally filed, is in substantial compliance with the laws of the State of Washington, and was entitled to be filed of record.

2. A chattel mortgage, under the laws of the State of Washington, need only be filed and need not be recorded.

I.

Starting with the fundamental proposition that this court will follow the decisions of the court of last resort of the State of Washington upon the construction and effect of the statutes of the State of Washington in question here, we say, first: that under the decisions of the Washington Supreme Court, the mortgage is valid; and, secondly: that upon principle and authority it is likewise valid. It will be conceded that unless there has been a substantial compliance with the statute in the execution of the mortgage and in its au-

thentication and filing, the mortgage is void as to the trustee of the bankrupt's estate.

It is the law that as to the signature of the notary or other officer taking an acknowledgement or subscribing to an affidavit, "a substantial compliance with the statute is all that is required of the certificate." 1 C. J. 836. And likewise as to the necessity of affixing his official seal, "a substantial compliance with the statute is all that is required in any case." I. C. J. 838. This rule is approved in principle by the Supreme Court of the State of Washington in *Woods vs. Young Lumber Co.,* 107 *Wash.* 432.

In view of the controlling effect of the decisions of that court upon this court, and for the benefit of the court in considering the state court's well reasoned opinion, we quote the opinion in full as follows:—

> "PARKER, J.—The plaintiff Woods, as receiver of the Mountain Mill Company, seeks recovery of a money judgment against the defendant, Young Lumber Company, upon the ground that it has received a preference payment as a creditor of the Mountain Mill Company, after the company becomes insolvent. The lumber company demurred to the receiver's complaint upon the ground that it did not state a cause of action, which demurrer was sustained by the superior court; and the receiver electing to stand upon his complaint and not plead further, judgment of dismissal was rendered against him, from which he has appealed to this court.

The only question necessary for us to notice is as to whether or not the chattel mortgage executed by the mill company, under which a sale of certain of its property was had in satisfaction of the lumber company's claim after the mill company's insolvency, was void for want of the attaching of the notary's official seal to his jurat certifying to the subscribing and swearing to the affidavit of good faith made by the president of the mill company, the mortgagor. The acknowledgement and the affidavit of good faith were both made by the president of the mill company in its behalf before the same notary. The notary's certificate of acknowledgement and his jurat certifying to the subscribing and swearing to the affidavit of good faith by the president were separate certificates, each being separately signed by the notary. Near to his signature upon the certificate of acknowledgement he placed in the usual position an impression of his official seal. There was no other impression of his official seal elsewhere upon the instrument. The affidavit of good faith immediately followed the certificate of acknowledgement, and the notary's jurat certifying to the subscribing and swearing to the affidavit followed the president's signature thereto. The mortgage, certificate of acknowledgement, affidavit of good faith, and certificate of the notary of the making of the latter, manifestly constitute one instrument, executed in all its parts at the same time.

Counsel for appellant invokes the general rule that the absence of an impression of a notary's official seal from the certificate of his performance of an official act, except in cases wherein the statute expressly dispenses with the necessity of a seal, renders the certificate of no effect, as held in *Gates vs. Brown,* 1 *Wash.* 470, 25 *Pac.* 914, and *Stetson & Post Mill Co. vs. McDonald,* 5 *Wash.*

496, 32 *Pac.* 108. The real controversy here is whether or not there is such an absence of an impression of the notary's official seal from his jurat certifying to the subscribing and swearing to the affidavit of good faith as to render that certificate of no effect. In other words, can it be held that the one impression of the notary's official seal near his signature to the certificate of acknowledgement is sufficient in law to render both certificates effective under the facts in this case. It is plain that this mortgage was made with a view not only of its becoming a good mortgage, as between the mortgagor and mortgagee, but with a view of its becoming a good mortgage as against all persons who might, after its execution, become interested in the mortgaged property. This was manifestly the intent and purpose at the time of its execution; and, as we have noticed, all acts of the parties, including those of the notary, having to do with its execution were concurrent as to time and constitute in effect one transaction. This, we think, is plainly evidenced upon the face of the instrument as a whole.

In Rem. Code, Sec. 3660, relating to the manner of executing chattel mortgages, we read:

> "A mortgage of personal property is void * * * unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged * * *"

It is plain that both the acknowledgement and the affidavit of good faith are necessary to a complete execution of the mortgage, except as between the mortgagor and mortgagee. These two acts are so intimately related to each other in their

purpose that the evidencing thereof by the notary might well be done by the notary in one certificate, especially when the instrument is acknowledged and the affidavit made by the same person. Plainly there is nothing in the statute requiring him to evidence the two acts by two separate certificates. We are of the opinion that, in view of the concurrence of all the acts on the part of the mortgagor, mortgagee and the notary, the acknowledgement and affidavit of good faith being made by the same person in behalf of the lumber company, the two certificates of the notary may be considered as one act; and the attaching of the seal to the certificate of acknowledgement be also deemed an attaching of it to the jurat certifying to the president's subscribing and swearing to the affidavit in good faith.

We have not had brought to our attention any authorities that we regard as exactly in point. It seems, however, that the reasoning of the decision of the New York Court of Appeals in *Olcott vs. Tioga R. C.*, 27 *N. Y.* 546, 84 *Am. Dec.* 298, supports the conclusion we here reach. In that case there was involved a notary's certificate of protest, and another separate certificate by him upon the same paper of the mailing of notices of the protest on the same day, the notary's seal being attached in the usual position near his signature to one certificate, but not elsewhere upon the paper. In holding that the one seal was sufficient to satisfy the law as to both certificates, and that it might be regarded as attached to both, Judge Selden, speaking for the court, all the other judges concurring, said:

'The statute contemplates but a single certificate as evidence of the presentment of a note or bill for payment, its protest, and the giving of notice of its

dishonor. The language of the statute is this: 'The certificate of a notary, under his hand and seal of office, of the presentment by him of any promissory note or bill of exchange for acceptance or payment, and of any protest of such bill or note for non-acceptance or non-payment, and of the service of notice thereof on any or all of the parties,' etc., 'shall be presumptive evidence of the facts contained in such certificate.' (3 R. S., ed., 474.) The notary may undoubtedly certify to each of the acts separately, but he may also, by one certificate, verify them. If the certificate be 'under his hand and seal of office, it is sufficient, and it cannot be of any importance where the seal is affixed. It may be at the beginning, at the end, or anywhere upon the margin, or might be appended by a ribbon, after the manner of the sealing of ancient charters. The officer is not required to certify to the sealing, but it is sufficient if the seal be, in fact, affixed, and the name signed. Unquestionably, therefore, if the seal had been placed where it is, and the signature only at the bottom of the last part of the certificate, the whole would have been sufficiently verified. I do not think it is any the less so byreason of the words, *'In testimonium veritatis,'* with the signature opposite the seal, between the two parts of the certificate. The whole may, with propriety, be regarded as one certificate, once sealed and twice signed. *I adopt this conclusion more readily, because the objection is merely formal, the certificate, in its present form, furnishing all the security against error, and imposing upon the notary all the responsibility which it could do if another seal were added.'*

We have italicized the portion of the language used by the learned judge which we think furnishes the key to the solution of our problem. The only difference, we think, between the situation there

involved and that here involved, is that there the statute seems to have contemplated evidencing the facts by a single certificate of the notary, while here our statute is silent upon the question of whether the notary shall evidence the taking of the acknowledgement and the subscribing and swearing to the affidavit of good faith by one or two certificates. We are quite convinced, however, that, under our statute, there is nothing preventing the notary evidencing the two acts by one certificate, and that, under the circumstances here shown, he may be considered as having done so, in so far as the attaching of his official seal is concerned. The only decsion coming to our notice which we regard as being authority to the contrary is that of *De Graw vs. King,* 28 *Minn.* 118, 9 *N. W.* 636.

The judgment is affirmed."

Authority, however, is not wanting in support of our contention from jurisdictions without this state. In *Wright vs. Wilson,* 17 *Mich.,* 192, there was presented the queston of the validity of a deed executed by a husband and wife. From the record appeared first, an acknowledgement in the name of the husband, but the signature of the acknowledging officer was missing. There then followed a second acknowledgement in the name of the wife taken separately and apart from the husband, and to this latter acknowledgement there was affixed the name of the justice of the peace authenticating the instrument. The Supreme Court of Michigan, in holding the deed valid, states that there were probably two blanks for the taking of the acknowledge-

ments upon the one deed, the acknowledgement as to the wife being last on the paper, held that there was a substantial compliance with the law, and that the instrument was valid. The opinion was written by that well known and able jurist Judge Christiancy, and concurred in by Justices Campbell and Graves, Chief Justice Cooley not sitting.

In *Jordan vs. Long,* 19 *So.* 843, there was considered the sufficiency of a notary's certificate of protest and demand of payment on a note. The certificate of protest was in due form, signed by the notary, and his seal affixed thereto. Under the same was written the following words:—"Delivered notice in person to C. E. Jordan, Florence, Alabama." There was no signature to this memorandum. It was contended by an endorser of the note that there was no notice of notificacation to him as the unsigned memroandum could not have been deemed to have been covered by the preceding signature of the notary.

The court said:—

> "We do not think that the certificate of the notary public of presentment for payment and notice was bad in any part on account of the fact that its recital of the giving of notice to the defendant was written below his official seal, and hence apart from the body of the certficate."

In *Andrews vs. Marshall,* 26 *Tex.* 212, there was under consideration the validity of a certificate of a

notary public to certain documents entitled to be of record in the registration of land titles. The court recognized the general rule that a notary's certificate must be signed, but said:—

> "The signature of the notary it is said is that which gives an instrument executed before him its character as a public instrument, and it cannot be considered authentic without it. If it were shown that the notary kept the originals in one volume for the year and signed at the end of the volume, this, it seems, would be sufficient."

So in the case at bar, it would seem to be sufficient as a substantial compliance with the statute for the notary to sign at the end of the page, the execution of the chattel mortgage as a whole being the one transaction, and the mortgagor being present, he executed the instrument, acknowledged it, swore to its being made in good faith.

More than this, as suggested by counsel for petitioner and appellant, his objection is a formal objection. The good faith of the parties is conceded. The immediate filing of the mortgage with the county auditor is undisputed. The requirements as to acknowledgement, affidavit and filing are formal in their nature, though required by the statute. No person can be injured by holding the mortgage valid. Without the mortgage the cars would not have been in the possession of the bankrupt. The trustee is now seeking to reap where the creditors have not sown, and we think this

a case where the language of the New York Court of Appeals, as italicized by Judge Parker, may well commend itself to the judgment of this court.

> *"I adopt this conclusion the more readily, because the objection is merely formal, the certificate, in its present form, furnishing all the security against error, and imposing upon the notary all the responsibility which it could do if another seal were added."*

Upon principle and the decisions of the court within and without this state, we are clear that the law is with us. If, however, the question were in doubt, then that construction of the statute should be adopted and that decision of this court rendered which will be in favor of the respondent and appellee under the well known theory of the law that such conclusions should be arrived at in doubtful cases as will attain substantial justice rather than those which will do *in justice*.

II.

It was unnecessary to record the chattel mortgage in question. It is a fact that as a general rule in this state for many years chattel mortgages have been filed and not recorded, and this is permitted under the statute. The court will take judicial knowledge of this fact, we believe. If it should not, we think that under the law it will take judicial knowledge that the statute permitting it, the filing only of a chattel mortgage

would be the customary practice of all persons loaning upon chattels.

The case of *Van Winkle vs. Micthum,* 66 *Wash.* 296, was one where the issue presented was, not whether a chattel mortgage securing the payment of over $300.00 must be recorded as well as filed, but whether such mortgage might be filed, recorded and then withdrawn from the records. In one section of the act in question, provision is made for the filing without recording of all chattel mortgages. An exception, however, is provided for in cases of mortgages of over $300.00, which may, under special permission given by the statute, be recorded and then withdrawn. It is true that in some cases, in construing the statutes, the word "may" may be read as being "must"; this upon the theory that it is manifest from the reading of the statute that such was the intention of the law makers. There is nothing in the consideration of the statute in question which leads to that view. Had the intention of the law makers been as contended for by an opposing counsel, Sec. 3660 of Remington's 1915 Codes and Statutes of Washington would have commenced to read as follows:—" A mortgage of personal property *securing the payment of the sum of* $300.00 *or a lesser amount* is void," etc. (Italics ours.)

It is apparent why the legislature of this state made the exception referred to in the case of mortgages securing the payment of more than $300.00. Let us

suppose that a railroad company, or other like corporation, owning personal property in many counties of the state, should desire to mortgage it to secure the payment of a bond issue. It could not have the mortgage on file in more than one county; this would be a physical impossibility. It would not then have any lien upon personal property in other counties. This then is one of the reasons for the legislative action.

The order of the district judge should be affirmed.

Respectfully submitted,

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